

HOMESTAKE OIL AND GAS CO.

IBLA 85-594 Decided December 19, 1986

Appeal from a decision of the Montana State Office, Bureau of Land Management, finding a decision of the Great Falls Resource Area Office assessing \$200 for failure to file monthly reports to be technically and procedurally correct. Great Falls 80306-A and Great Falls 86692.

Affirmed in part; vacated in part.

1. Evidence: Presumptions--Evidence: Sufficiency--Rules of Practice:
Evidence

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced documents filed with them is rebuttable by probative evidence to the contrary. The presumption is not overcome by a statement, without corroborating evidence, that a document was mailed.

2. Oil and Gas Leases: Civil Assessments and Penalties-- Regulations:
Generally

An assessment levied pursuant to 43 CFR 3163.3(h) for failure to file a monthly production report in a timely manner may be vacated by this Board, in view of the suspension of that regulation and a change in Department policy that such assessments should automatically be levied.

APPEARANCES: George L. Campanella, Great Falls, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Homestake Oil and Gas Company (Homestake) has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated April 3, 1985, finding a decision of the Great Falls Resource Area office to be technically and procedurally correct. The area office decision had assessed appellant \$200 for failure to submit timely reports of its January 1985 operations on oil and gas leases Great Falls 80306-A and Great Falls 86692 as required by 43 CFR 3162.4-3.

In its statement of reasons, appellant states that it did in fact mail the subject reports on February 28, 1985, when it also mailed State production reports to the appropriate State officials. Having confirmed that its State reports were timely received, appellant speculates that its

Federal reports (form 3160-6) were lost in the mail. Copies of its tardy reports were included with appellant's statement of reasons.

[1] Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced documents filed with them is rebuttable by probative evidence to the contrary. The presumption is not overcome by a statement, without corroborating evidence, that a document was mailed. Fern L. Evans, 88 IBLA 45 (1985). Where, as here, there is an absence of any corroborating evidence supporting appellant's statement that its reports were timely filed with BLM, the presumption of regularity supports BLM's finding that such reports were untimely. Accordingly, we hold BLM properly determined that appellant's failure to file its reports on time was an incident of noncompliance with 43 CFR 3162.4-3.

[2] In calculating the amount assessed, BLM relied on 43 CFR 3163.3(h). That regulation provides, inter alia, that a failure to file reports required by the regulations shall result in an assessment of \$100. By notice published at 50 FR 11517 (Mar. 22, 1985), BLM suspended its use of the provisions appearing at 43 CFR 3163.3(c) through (j) except where actual loss or damage can be ascertained. This suspension was implemented by BLM Instruction Memorandum No. 85-384 (Apr. 16, 1985), and thereafter proposed rulemaking was published at 51 FR 3882 (Jan. 30, 1986) that would eliminate automatic assessments for failure to file reports in a timely manner under 43 CFR 3163.3(h). Under the proposed rulemaking, BLM would not automatically assess Homestake but would be required to give it notice that it had violated reporting requirements.

Similar factual settings have been reviewed by this Board in Burton/Hawks, Inc., 92 IBLA 180 (1986), and Yates Petroleum Corp., 91 IBLA 252 (1985). Therein we recognized that BLM's suspension and proposed rulemaking, while not dispositive, did reflect the Department's current policy regarding the levy of assessments for reporting violations. In each of these cases, the Board applied the policy set forth in the proposed regulations and vacated BLM's decision assessing damages. No reason appears in the present record for doing otherwise.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and vacated in part.

John H. Kelly
Administrative Judge

We concur:

James L. Burski C. Randall Grant, Jr.
Administrative Judge

Administrative Judge

